

IN THE UNITED DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

Howard Carr,

Plaintiff

5:10-CV-126

Jury

Vs.

Invacare Corporation,

Defendant

PLAINTIFF'S ORIGINAL COMPLAINT

COMES NOW, Howard Carr, Plaintiff and for his original civil complaint for personal injury and damages against Invacare Corporation, Defendant states the following:

1. Plaintiff is a resident of the state of Texas residing at 5332 Buchanan Road, Texarkana, Texas 75501 in Bowie County.
2. Defendant is a corporation which is incorporated in the State of Oh with it principal place of business and corporate registration being in said State, and its registered statutory agent being C T Corporation System, 1300 East 9th Street, Cleveland, Ohio 44114.
3. This court has jurisdiction over this civil action pursuant to Title 28 United States Code, Section 1332(a)(1) (2010) in the that parties to said civil action have diversity of citizenship and the amount in controversy in the matter being in excess of \$75,000.
4. Plaintiff is a disabled person who began to use a wheelchair in 2003. In 2006, Plaintiff purchased a wheelchair that was manufactured by Invacare Corporation from Praxair

4040 Summerhill Square, Texarkana, Texas 75503. The wheelchair, Invacare Corporation Model 9000XDT, Serial Number 06AM020286, was utilized by Plaintiff on a daily basis due to his medical disability. On or about July 23, 2008, the aforesaid wheelchair broke while being utilized by Plaintiff thereby causing Plaintiff to fall onto his back and shoulders. As a result of the wheelchair breaking and Plaintiff's fall, Plaintiff suffered personal injury requiring back surgery, incurred medical expense, pain and suffering, inconvenience, emotional distress.

5. Plaintiff alleges that Defendant is liable for the personal injury and damages he has suffered due to the fact that the wheelchair that was manufactured by Invacare Corporation was defective in manufacture, design, and marketing. This defective product was a producing cause of the personal injury suffered by the Plaintiff.
6. Plaintiff alleges Invacare Corporation, Defendant, breached its express and implied warranties of fitness and merchantability as they relate to the wheelchair manufactured by Defendant and purchased by Plaintiff and that Defendant is strictly liable to Plaintiff for the injuries suffered as a result of his use of Defendant's defective product.
7. Plaintiff alleges that he has suffered personal injury to his back, incurred past medical expenses, endured pain and suffering, emotional distress, mental anguish, inconvenience, and will incur future medical expense as a result of his use of Defendant's defective product.
8. Plaintiff alleges that Defendant is liable for his personal injury and that Defendant should be ordered to compensate him for the damages he has incurred.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Howard Carr, prays that this Honorable Court find that the Defendant, Invacare Corporation's, product, namely, a wheelchair purchased

by Plaintiff was defective in its manufacture, design, and marketing, and that its defect was a producing cause of the personal injury suffered by Plaintiff. Also, Plaintiff prays that this Honorable Court find that the Defendant breached its express and implied warranties of fitness and merchantability as it relates to its product and that Defendant is strictly liable to Plaintiff. Further, Plaintiff prays that this Honorable Court order Defendant to compensate Plaintiff for the personal injury and damages he incurred as a result of the use of Defendant product and for all other relief to which Plaintiff may be entitled.

FOR: Howard Carr, Plaintiff

/s/ Garland E. Yarber

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